

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICK LARSEN, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

PTT, LLC (d/b/a HIGH 5 GAMES, LLC), a
Delaware limited liability company, and HIGH 5
ENTERTAINMENT, LLC, a New Jersey limited
liability company,

Defendants.

No. 3:18-cv-05275-TMC

PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this court by virtue of 28 U.S.C. § 1332(d)(2) because (a) at least one member of the class is a citizen of a state different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

CLAIMS AND DEFENSES

Plaintiff will pursue at trial the following claims: (1) violation of Washington's Recovery of Money Lost at Gambling Act ("RMLGA"), RCW § 4.24.070; and (2) violations of Washington's Consumer Protection Act ("CPA"), RCW § 19.86.010 *et seq.*

With respect to Plaintiff's request for treble damages under the CPA, which is a legal issue for the court and should be decided separately from the issues presented to the jury, High 5 Games, LLC ("High 5"), plans to present the defense that its violation of the RMLGA (and thus

the CPA) occurred in good faith under a reasonable belief that it was not improper. *See, e.g., Young v. Whidbey Island Bd. of Realtors*, 638 P.2d 1235, 1239–40 (Wash. 1982).

ADMITTED FACTS

The following facts are admitted by the parties:

1. Defendant High 5 Games, LLC (“High 5”) develops and licenses software used in physical gambling machines which are operated in casinos and in online gaming.
2. High 5 also developed social casino game applications.
3. High 5’s social casino game applications were called High 5 Casino and High 5 Vegas.
4. The Court has found that the virtual coins in High 5’s social casino game applications are “things of value” because they extend “the privilege of playing the game.”
5. Plaintiff Larsen represents a class of persons who purchased virtual coins while in Washington while playing High 5 social casino game applications from April 6, 2014 through September 30, 2022.

ISSUES OF LAW

The following are the issues of law to be determined by the court: (*List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the court, such as “Is the plaintiff entitled to recover?” will not be accepted.*) *If the parties cannot agree on the issues of law, separate statements may be given in the pretrial order.*

The Court has already granted Plaintiff’s motion for summary judgment as to liability, finding that High 5 violated the Recovery of Money Lost in Gambling Act (“RMLGA”) and Consumer Protection Act (“CPA”). *See generally* Dkt. #408. Therefore, the sole issue remaining for trial is damages.¹ The Court previously certified a damages class, which is comprised of

¹ Although the Court also previously certified an Injunctive Class, it has recently determined that Plaintiff failed to present any evidence or argument establishing that faced a “sufficiently imminent and substantial” risk of future harm from High 5’s products as of the date he sought to represent the class. *See* Dkt. #514 at 17. Because Plaintiff therefore lacks standing to seek

1 “[a]ll individuals in Washington who purchased virtual casino chips on either High 5 Casino or
 2 High 5 Vegas after April 9, 2014.” Dkt. #170 at 16. The Court recently concluded that Plaintiff
 3 Larsen does not have standing to pursue direct claims against High 5 Entertainment, LLC and
 4 thus bifurcated Plaintiff’s alter ego and Uniform Voidable Transactions Act claims from the
 5 upcoming damages trial. Dkts. ##514–15. Given this ruling, the only damages at issue for the
 6 upcoming jury trial are those incurred while High 5 was still operating the social casino games—
 7 *i.e.*, until September 30, 2022.

8 The Damages Class members are entitled to the amount of aggregate damages suffered
 9 by the Damages Class and proved by Plaintiff during trial. The Court has already concluded that
 10 for the CPA and RMLGA claims: (1) the aggregate damages should be measured by the
 11 cumulative value of coins purchased by the Damages Class, and (2) the individual allocations
 12 can be handled after trial through a claims procedure after the aggregate amount is proved. Dkt.
 13 #408 at 19–20.

14 Accordingly, the sole remaining issue for trier of fact to determine at the upcoming trial
 15 is:

- 16 1. Determination of the aggregate value of virtual coins purchased by the
 17 Damages Class.

18 The remaining legal issues for the Court are:

- 19 1. Whether Plaintiff and the Class are entitled to an increase in the award of
 20 damages, to an amount not more than three times the actual damages
 21 sustained, under the Washington CPA?²

22 Finally, on December 12, 2024, the Court granted Plaintiff leave to amend to add claims
 23 and allegations pertaining to High 5 Entertainment LLC’s alter ego liability for pre-October 1,

24

injunctive relief, injunctive relief is no longer on the table. *See id.* (denying Plaintiff’s motion for
 25 permanent injunction).

² High 5 intends to file a trial brief explaining that, if Plaintiff proves “actual damages”—a precursor to treble damages under the CPA—this issue should be decided in post-trial proceedings.

2022, transactions and a cause of action against Defendants High 5 Games LLC and High 5 Entertainment LLC under the Uniform Voidable Transactions Act. Although issues of law and fact remain to be determined as to such claims, they have been bifurcated from the issues outlined above and their resolution stayed until after the upcoming damages trial.

EXPERT WITNESSES

None.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiff:

1. Rick Larsen
c/o Tousley Brain Stephens, PLLC
1200 5th Avenue, Suite 1700
Seattle, WA 98101

Mr. Larsen may be called to testify concerning the details regarding his purchase of virtual chips from Defendant for use in High 5's online casino games.

2. Shawn Davis
c/o Tousley Brain Stephens, PLLC
1200 5th Avenue, Suite 1700
Seattle, WA 98101

Mr. Davis will testify concerning his knowledge of the summaries and calculations he prepared on the data provided by the non-party platforms and High 5, including: (i) the number of virtual chip purchase transactions reflected in the data, (ii) the number of unique purchasers reflected in the data, (iii) the total revenue minus any refunds reflected in the data, and (iv) spending group breakdowns reflected in the data.

3. Custodian of records for non-party Apple, Inc., including Robin Goldberg or another custodian of records for Apple, Inc.

Such custodian may be called to authenticate and provide a foundation for the admission of documents produced by non-party Apple, Inc. at trial.

1 4. Custodian of records for non-party Google LLC, including Jordan Zuccarello or
2 another custodian of records for Google LLC.

3 Such custodian may be called to authenticate and provide a foundation for the admission
4 of documents produced by non-party Google LLC at trial.

5 5. Custodian of records for non-party Meta Platforms, Inc., including Matt Daley or
6 another custodian of records for Meta Platforms, Inc.

7 Such custodian may be called to authenticate and provide a foundation for the admission
8 of documents produced by non-party Meta Platforms, Inc. at trial.

9 6. Custodian of records for non-party Amazon.com, Inc., including Theresa Nixon or
10 another custodian of records for Amazon.com, Inc.

11 Such custodian may be called to authenticate and provide a foundation for the admission
12 of documents produced by non-party Amazon.com, Inc. at trial.

13 7. Anthony Singer
14 c/o Holland & Hart, LLP
15 555 17th Street, Ste 3200
16 Denver, CO 80202

17 Mr. Singer may be called to testify regarding High 5's operations and practices, the dollar
18 value of virtual chips High 5 sold to Plaintiff and Class members, and the dollar value of virtual
19 chips that Plaintiff and Class members lost playing at High 5's online casino. Mr. Singer may
20 also be called to testify by deposition.

21 8. Gino Fratto
22 c/o Holland & Hart, LLP
23 555 17th Street, Ste 3200
24 Denver, CO 80202

25 Mr. Fratto may be called to testify regarding High 5's operations and practices, the dollar
value of virtual chips High 5 sold to Plaintiff and Class members, and the dollar value of virtual
chips that Plaintiff and Class members lost playing at High 5's online casino. Mr. Fratto may
also be called to testify by deposition.

9. Karl Tangara
c/o Holland & Hart, LLP
555 17th Street, Ste 3200
Denver, CO 80202

Mr. Tangara may be called to testify regarding High 5's operations and practices, the dollar value of virtual chips High 5 sold to Plaintiff and Class members, and the dollar value of virtual chips that Plaintiff and Class members lost playing at High 5's online casino. Mr. Tangara may also be called to testify by deposition.

10. Deanna Ishikawa
c/o Holland & Hart, LLP
555 17th Street, Ste 3200
Denver, CO 80202

Mr. Ishikawa may be called to testify regarding High 5's operations and practices, the dollar value of virtual chips High 5 sold to Plaintiff and Class members, and the dollar value of virtual chips that Plaintiff and Class members lost playing at High 5's online casino. Ms. Ishikawa may also be called to testify by deposition.

11. Any witness designated by Defendant High 5 Games, LLC
c/o Holland & Hart, LLP
555 17th Street, Ste 3200
Denver, CO 80202

Plaintiff and the Class reserve the right to call any witness identified, designated, and/or called by Defendant High 5 Games, LLC on any subject on which they have been designated, disclosed, and previously testified by deposition.

(b) On behalf of Defendant High 5 Games, LLC: (follow same format).

(As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

1. Rick Larson
c/o Tousley Brain Stephens, PLLC
1200 5th Avenue, Suite 1700
Seattle, WA 98101
Possible witness only

Mr. Larson may be called to testify concerning his social casino game habits, his virtual coin purchases, and other issues related to his play on High 5 Casino and other social casino apps.

1 2. Sean Wilson
2 c/o Tousley Brain Stephens, PLLC
3 1200 5th Avenue, Suite 1700
4 Seattle, WA 98101
5 Possible witness only

6 Mr. Wilson may be called to testify by live testimony or deposition concerning his social
7 casino game habits, his virtual coin purchases, and other issues related to his play on High 5
8 Casino and other social casino apps, all as included in Defendant's deposition designations for
9 Mr. Wilson.

10 3. Anthony Singer
11 c/o Holland & Hart LLP
12 555 17th Street, Ste, 3200
13 Denver, DO 80202

14 Mr. Singer will be called to testify concerning High 5's formation, its operations and
15 practices, the differences between High 5's real money gaming operations and its social casino
16 apps, High 5's attempts to make its social casino apps unavailable in the State of Washington,
17 High 5's revenue and inability to track revenue received from play in any geographic area
18 including the State of Washington, and all other aspects of the case.

19 4. Gino Fratto
20 c/o Holland & Hart LLP
21 555 17th Street, Ste, 3200
22 Denver, DO 80202
23 Possible witness only

24 Mr. Fratto may be called to testify concerning High 5's operations and practices, its
25 content development, its business model, and the High 5 Casino and High 5 Vegas player
experience.

26 4. Chris Armes
27 c/o Holland & Hart LLP
28 555 17th Street, Ste, 3200
29 Denver, DO 80202
30 Possible witness only

Mr. Armes may be called to testify to explain High 5's internal revenue tracking procedures, its attempts to utilize IP-address-based geolocation, and the shortfalls of the technology.

(As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag with the following information in table format:

Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	Data produced by Apple Inc. [APL-WILSON_00220265]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
2	Data produced by Apple Inc. [APL-WILSON_00220267]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
3	Data produced by Apple Inc. [APL-WILSON_00220268]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
4	Data produced by Apple Inc. [APL-WILSON_00220269]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
5	Data produced by Google Inc. [GOOGLE-LARSEN_000001]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
6	Data produced by Meta Platforms, Inc. [META-LARSEN_000001]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	

7	Data produced by Meta Platforms, Inc. [META- LARSEN_000005]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
8	Data produced by Amazon [AMAZON- LARSEN_000001]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
9	Data produced by Amazon [AMAZON- LARSEN_000002]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
10	Data produced by Amazon [AMAZON- LARSEN_000005]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
11	Data produced by Amazon [AMAZON- LARSEN_000006]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
12	1/19/2024 Declaration of Shawn Davis [Dkt. 278]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
13	5/24/2024 Third Supplemental Declaration of Shawn Davis [Dkt. 437-12]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
14	Transaction data [HIGH5_000036]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803	
15	Transaction data [HIGH5_000037]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803	
16	1/19/2024 Declaration of Records Custodian for Amazon [Dkt. 277-21]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
17	1/19/2024 Declaration of	Disputed	Disputed	E, F, MIL; FRE 403, 602,	

	Records Custodian for Apple [Dkt. 275-8]			801, 803, 901, 1006	
18	1/19/2024 Declaration of Records Custodian for Google [Dkt. 277-15]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
19	1/19/2024 Declaration of Records Custodian for Meta [Dkt. 275-10]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
20	4/24/2024 Second Declaration of Records Custodian for Amazon	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
21	7/25/2024 Supplemental Declaration of Records Custodian for Meta [Dkt. 437-11]	Disputed	Disputed	E, F, MIL; FRE 403, 602, 801, 803, 901, 1006	
22	iPad containing copy of Social Casino game, lodged with the Court on 7.27.2020. [Dkt. 437-11]	Disputed	Disputed	FRCP 26	
23	12/18/2013 Email chain between Gino Fratto, Elaine Ogden, Anurag Sharma and others re: Unable to block player from coin store [HIGH5_00001718-HIGH5_001719]	Stipulated	Disputed	E, F, MIL FRE 401, 403, 701, 702, 801, 803, 805	
24	04/16/2014 Email chain between Patrick Benson, Anthony Singer,	Stipulated	Disputed	FRE 401, 403	

	Deanna Ishikawa, and others re: Targeting Slotomania Monetizers (1 attachment) [HIGH5_00145089– HIGH5_145096]				
25	03/10/2015 Email chain between Gian- Mical Gallerani, Gino Fratto, Patrick Benson, and Drazen Pantic re: 1.23 Coin Store Issue [HIGH5_02539119 –HIGH5_02539119]	Stipulated	Disputed	MIL, FRE 401, 403	
26	12/03/2015 Email chain between Michael Grundvig, Gian-Mical Galleranie, Brian Nakamura, Lorin Jameson, Gino Fratto and others re: Economy Changes and Much More [HIGH5_02532327 –HIGH5_02532336]	Stipulated	Disputed	FRE 401, 403	
27	12/11/2015 Email chain between Patrick Benson, Karl Tangara, Deanna Ishikawa, and others re: Fradulent Charges on Mastercard ending in 0690 [HIGH5_00146738– HIGH5_146742]	Stipulated	Disputed	E, F, MIL FRE 401, 403, 701, 702, 801, 803, 805	
28	12/29/2015 Task Email from Deanna Ishikawa to Kori Valz re: [JIRA] {DM-48} Minnows,	Stipulated	Disputed	MIL, FRE 401, 403	

	Dolphins, & Whales Information [HIGH5_02671276–HIGH5_02671276]				
29	01/08/2016 Email chain between Patrick Benson, Brian Nakamura, Deanna Ishikawa, and Karina Avellaneda re: Android [HIGH5_02671306–HIGH5_02671307]	Stipulated	Disputed	F, MIL FRE 401, 403, 801, 803	
30	01/08/2016 Compilation of User Profiles [HIGH5_02671869–HIGH5_02671873]	Stipulated	Disputed	FRE 401, 403, 801, 803	
31	02/18/2016 Draft Agenda for High 5 Games Executive Team Summit on February 22 and 23 [HIGH5_03871507–HIGH5_03871511]	Stipulated	Disputed	FRE 401, 403	
32	03/28/2016 Club High 5 Proposal [HIGH5_00002202–HIGH5_002214]	Stipulated	Disputed	FRE 401, 403	
33	05/11/2016 Email chain between Brian Noto, Anthony Singer, and Graham Fuchs re: eCommerce Market Convergence in Action: Social Casinos and Real Money Gambling [HIGH5_00002033–HIGH5_002034]	Stipulated	Disputed	FRE 401, 403, 801, 803	

34	08/31/2016 Email chain between Deanna Ishikawa, Ivan Rankenburg and Deanna Ishikawa re: Whale report [HIGH5_02672429–HIGH5_02672430]	Stipulated	Disputed	MIL, FRE 401, 403	
35	09/29/2016 Email from Ivan Rankenburg to Patrick Benson, and copying Deanna Ishikawa re: Whale report [HIGH5_02671771–HIGH5_02671772]	Stipulated	Disputed	MIL, FRE 401, 403	
36	12/20/2016 Email chain between Ivan Rankenburg, Patrick Benson, Oleg Simonov, and others re: High 5 Vegas Coin Store [HIGH5_02539397–HIGH5_02539403]	Stipulated	Disputed	FRE 401, 403	
37	01/19/2017 Zendesk message from Customer requesting closure of account due to gambling addiction [HIGH5_03245025–HIGH5_03245026]	Stipulated	Disputed	E, F, MIL, FRE 401, 403, 701, 702, 801, 803, 805	
38	02/03/2017 Email from Mariya Padalk to Carolina Ocampo, Cathering Conde, Gino Fratto and others re: Campaign Brain Storms (Meeting Minutes 2/3/17)	Stipulated	Disputed	MIL, FRE 401, 403	

	[HIGH5_02540416 –HIGH5_02540417]				
39	02/08/2017 Email chain between Patrick Benson, Carolina Ocampo and others re: RevOps Update for Review (2 attachments) [HIGH5_00144197 –HIGH5_144202]	Stipulated	Disputed	FRE 401, 403	
40	02/08/2017 Email chain between Gian-Mical Gallerani, Patrick Benson, Mariya Padalk, and Deanna Ishikawa re: RevOps Status 001 [HIGH5_02671379 –HIGH5_02671380]	Stipulated	Disputed	FRE 401, 403	
41	02/08/2017 Email from Patrick Benson to Mariya Padalko, Gian-Mical Gallerani and Carolina Ocampo, and copying Deanna Ishikawa and Lori Poalillo re: RevOps Update for Review (1 attachment) [HIGH5_02870046 –HIGH5_02870049]	Stipulated	Disputed	FRE 401, 403	
42	02/16/2017 Task email from Carolina Ocampo to Deanna Ishikawa re: [JIRA] {REVOPS-246} Engagements: \$10 package gift for 30D+ state monets/60D+ stale monet whales	Stipulated	Disputed	MIL, FRE 401, 403	

	[HIGH5_02671441 –HIGH5_02671442]				
43	02/22/2017 Task email from Christopher Bate (Jira) to Danna Ishikawa re: [JIRA] {REVOPS-246} Engagement: \$10 package gift for 30D+ state montes/60D+ stale monet whales [HIGH5_02671438 –HIGH5_02671438]	Stipulated	Disputed	MIL, FRE 401, 403	
44	02/24/2017 Email from Louis Costantini to Catherine Conde, and Gian-Mical Gallerani, copying Karina Avellaneda re: Email Apprval for Today [HIGH5_02665592 –HIGH5_02665595]	Stipulated	Disputed	MIL, FRE 401, 403	
45	03/30/2017 Email chain between Anthony Singer and Patrick Benson, and copying Deanna Ishikawa re: Tournament Winners [HIGH5_02671377 –HIGH5_02671378]	Stipulated	Disputed	MIL, FRE 401, 403	
46	07/19/2017 Email chain between Brian Noto, Susan Stein, Anthony Singer, and others re: High 5 Strategy - Director's Meeting	Stipulated	Disputed	FRE 401, 403, 801, 803, 805	

	[HIGH5_00002437– HIGH5_002440]				
47	09/25/2017 Email chain between Patrick Benson, Anthony Singer and others re: A Couple of Follow Ups [HIGH5_00142342– HIGH5_142344]	Stipulated	Disputed	FRE 401, 403	
48	03/22/2018 High5 Games RevOps Social Casino Report [HIGH5_00029192 –HIGH5_029214]	Stipulated	Disputed	FRE 401, 403	
49	07/27/2018 Email from Laura Pai to Deanna Ishikawa, and copying Linday Choy re: Stale Whale Monetizers (Gift Effort) (2 attachments) [HIGH5_02668713 –HIGH5_02668725]	Stipulated	Disputed	MIL, FRE 401, 403	
50	10/17/2018 Email chain between Patrick Benson, Gino Fratto, and others re: Social Monetization [HIGH5_02673839 –HIGH5_02673841]	Stipulated	Disputed	MIL, FRE 401, 403	
51	11/08/2018 High 5 Casino B2C Annual Operational Plan 2019 [HIGH5_03178064 –HIGH5_03178086]	Stipulated	Disputed	FRE 401, 403	
52	03/06/2019 Memo re: Responsible Gambling	Stipulated	Disputed	FRE 401, 403	

	[HIGH5_03864507– HIGH5_03864510]				
53	07/26/2019 Task Email from Christopher Bate (Jira) to Samanth Wood re: [JIRA] {DM-2428} Pull User ID and Monetization for canvas users with a 10K spend or higher that have not logged into H5C since 7/23/19 [HIGH5_02665116 –HIGH5_02665116]	Stipulated	Disputed	F, MIL, FRE 401, 403	
54	08/08/2019 Email from Gino Fratto to Brian Nakamura, Kelli Trogani, Janine Cotter, Brian Abrams and others re: B2C Revenue Workshop Tableau Charts [HIGH5_02539642 –HIGH5_02539643]	Stipulated	Disputed	MIL, FRE 401, 403	
55	08/08/2019 Email from Gino Fratto to Brian Nakamura, Kelli Trogani, Janine Cotter, Brian Abrams and others re: B2C Weekly Revenue Workshop Tableau Charts [HIGH5_02540328 –HIGH5_02540328]	Stipulated	Disputed	MIL, FRE 401, 403	
56	08/22/2019 Email from Samantha Wood to Laura Pai and Deanna Ishikawa re: Whale Device Replacement	Stipulated	Disputed	F, MIL, FRE 401, 403	

	Activity (1 attachment [HIGH5_02671568 -HIGH5_02671571])				
57	09/03/2019 Email chain between David Evans, Samantha Wood, Gino Fratto and others re: Whales who received Device Replacement [HIGH5_02539604 -HIGH5_02539607]	Stipulated	Disputed	MIL, FRE 401, 403, 801, 803, 805	
58	09/10/2019 Email from Laura Pai to Deanna Ishikawa re: tableau chart [HIGH5_02672195 -HIGH5_02672195]	Stipulated	Disputed	F, MIL, FRE 401, 403	
59	09/01/2020 Email by Laura Pai re: Social Whale Projects [HIGH5_02668273 -HIGH5_02668273]	Stipulated	Disputed	F, MIL, FRE 401, 403	
60	09/06/2020 Zendesk message from Customer requesting closure of account due to gambling addiction [HIGH5_02917351 -HIGH5_02917351]	Stipulated	Disputed	E, F, MIL, FRE 401, 403, 701, 702, 801, 803, 805	
61	10/02/2020 Task Email from Laura Pai (Jira) to Timothy Markowicz re: [JIRA] Updates for DM-3287: Whale List to Send High Min Bet Exclusive Game [HIGH5_02668599 -HIGH5_02668600]	Stipulated	Disputed	F, MIL, FRE 401, 403	

62	10/12/2020 Email chain between Diego Rainis and Laura Pai re: Whales - inactive (1 attachment) [HIGH5_02668299-HIGH5_02668303]	Stipulated	Disputed	F, MIL, FRE 401, 403	
63	10/12/2020 Email from Yana Tsyganova to Laura Pai, and copying Diego Rainis re: Whales - inactive [HIGH5_02668921-HIGH5_02668921]	Stipulated	Disputed	F, MIL, FRE 401, 403	
64	10/16/2020 Email chain between Laura Pai, Timothy Markowicz, and Diego Rainis re: Whale Campaign: Serve Exclusive Game [HIGH5_02668935-HIGH5_02668944]	Stipulated	Disputed	F, MIL, FRE 401, 403	
65	10/26/2020 Task Email from Caitlin O'Malley to Timothy Markowicz re [JIR]} Updates for DM-3338: List: Serve Games to Whale Monetizers [HIGH5_02667328-HIGH5_02667329]	Stipulated	Disputed	F, MIL, FRE 401, 403	
66	10/28/2020 Email from Caitlin O'Malley to Samantha Wood and Denise Castillo, and copying Laura Pai re: High Roller Serve Games to Whale Monetizers Promotion	Stipulated	Disputed	F, MIL, FRE 401, 403	

	[HIGH5_03124026 –HIGH5_03124027]				
67	12/03/2020 Task Email from Caitlin O'Malley to Adam Steele re [JIRA] Updates for DM- 3414: List: Serve Games to Whale Monetizers 12/00 [HIGH5_01477847 –HIGH5_01477848]	Stipulated	Disputed	F, MIL, FRE 401, 403	
68	12/22/2021 Email from Nicholas Chin to Anthony Singer, Carl Hallam, Husniye Temocin, and Joe Centineo re: Reward access / Whale boosted spins - 11/22 1045 am [HIGH5_02670337 –HIGH5_02670337]	Stipulated	Disputed	MIL, FRE 401, 403	
69	03/08/2023 Chat between Alina Shymanska, Dmytro Skilarov re: disabling customer's ability to buy credits due to gambling addiction [HIGH5_03387037– HIGH5_03387038]	Stipulated	Disputed	F, MIL, FRE 401, 403, 801, 803, 805	
70	08/11/2023 Chat between Naigell Beckford, Claudia V (Lila), and Lisa Husniye re: customer's request for a refund because of gambling addiction [HIGH5_03388486– HIGH5_03388500]	Stipulated	Disputed	E, F, MIL, FRE 401, 403, 701, 702, 801, 803, 805	

71	11/05/2023 Chat between Husniye Lisa, Diego Raini, and Anthony Singer re: removal of limit [HIGH5_03379830 -HIGH5_03379834]	Stipulated	Disputed	FRE 401, 403	
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Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
500	Washington State Gambling Commission Guidance to Online Social Gaming	Disputed	Disputed	FRE 401, 402, 702, 801, 802, F,	
501	High 5 Games, LLC and Subsidiary Consolidated Financial Statements December 31, 2014 and 2013 [HIGH5_04012146-HIGH5_04012167]	Stipulated	Stipulated		
502	High 5 Games, LLC and Subsidiary Consolidated Financial Statements December 31, 2015 and 2014 [HIGH5_00936725-HIGH5_00936745]	Stipulated	Stipulated		
503	High 5 Games, LLC and Subsidiary Consolidated Financial Statements December 31, 2016 and 2015 [HIGH5_00936746-HIGH5_00936764]	Stipulated	Stipulated		
504	High 5 Games, LLC and Subsidiary Consolidated Financial Statements December 31, 2017 and 2016	Stipulated	Stipulated		

	[HIGH5_00936765-HIGH5_00936784]				
505	4/17/2018 Washington State Gambling Commission Article - "Director's statement regarding Ninth Circuit Court of Appeals' published decision in Kater v. Churchill Downs"	Disputed	Disputed	FRE 401, 402, 702, 801, 802, F, E	
506	High 5 Games, LLC and Subsidiaries Consolidated Financial Statements December 31, 2018 and 2017 [HIGH5_00936785-HIGH5_00936804]	Stipulated	Stipulated		
507	8/25/2019 - 8/26/2019 Payment confirmations to High 5 Casino Real Slots [LARSEN_000002]	Stipulated	Stipulated		
508	10/23/2019 Sean Wilson Tweet	Disputed	Disputed	FRE 401, 402, 403, 801, 802	
509	11/1/2019 Sean Wilson Tweet	Disputed	Disputed	FRE 401, 402, 403, 801, 802	
510	High 5 Games, LLC and Subsidiaries Consolidated Financial Statements December 31, 2019 and 2018 [HIGH5_00936805-HIGH5_00936824]	Stipulated	Stipulated		
511	High 5 Games, LLC and Subsidiaries Consolidated Financial Statements for December 31, 2020 and 2019	Stipulated	Stipulated		

	[HIGH5_00936825 – HIGH5_00936844]				
512	8/21/2022 Zendesk Ticket #438816 re “I don’t live in Washington” [HIGH_151152 – HIGH5_151154]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
513	10/3/2022 Zendesk Ticket #440508 re “Why can’t I play some games” [HIGH5_151378- HIGH5_151379]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
514	10/21/2022 Zendesk Ticket #441009 re “Unable to make purchases” [HIGH5_151233 – HIGH5_151235]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
515	11/3/2022 Zendesk Ticket #441294 re “Unable to make purchases” [HIGH5_151261]	Disputed	Disputed	FRE 401, 402, 801, 802	
516	11/10/2022 Zendesk Ticket #441584 re “not able to log in” [HIGH5_151240- HIGH5_151242]	Disputed	Disputed	FRE 401, 402, 801, 802	
517	11/13/2022 Zendesk Ticket #441799 re “Live in Oregon” [HIGH5_151224 – HIGH5_151225]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
518	11/15/2022 Zendesk Ticket #441941 re “Oregon” [HIGH5_151630 – HIGH5_151631]	Disputed	Disputed	FRE 401, 402, 801, 802, F	

519	11/15/2022 Zendesk Ticket #441918 re "Playing games" [HIGH5_151633]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
520	11/20/2022 Zendesk Ticket #442140 re "Can't sign in" [HIGH5_151390]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
521	11/20/2022 Zendesk Ticket #442150 re "High five casino disabled in my region?" [HIGH5_151579]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
522	11/25/2022 Zendesk Ticket #442381 re "No access to High 5 casino" [HIGH5_151609-HIGH5_151610]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
523	12/2/2022 Zendesk Ticket #442635 re "high 5 game" [HIGH5_151264]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
524	12/15/2022 Zendesk Ticket #442986 re "Some problems" [HIGH5_151355 – HIGH5_151356]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
525	12/16/2022 Zendesk Ticket #443031 re "Not allowed to play after 12 years of playing." [HIGH5_151591 – HIGH5_151592]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
526	12/21/2022 Zendesk Ticket #443157 re "Cannot Access High 5"	Disputed	Disputed	FRE 401, 402, 801, 802, F	

	[HIGH5_151269 – HIGH5_151270]				
527	High 5 Games, LLC and Subsidiaries Consolidated Financial Statements December 31, 2022 and 2021 [HIGH5_00936541 – HIGH5_00936560]	Stipulated	Stipulated		
528	1/11/2023 Zendesk Ticket #443727 re “Not available in my area” [HIGH5_151246]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
529	1/15/2023 Zendesk Ticket #443834 re “High five sasino disabled in my region?” [HIGH5_151643 – HIGH5_151644]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
530	1/19/2023 Zendesk Ticket #443979 re “Can’t login to your game” [HIGH5_151375]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
531	2/11/2023 Zendesk Ticket #444847 re "I am unable to login to High 5 Casino" [HIGH5_151369- HIGH5_151370]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
532	4/16/2023 Zendesk Ticket #461283 re “Washington state” [HIGH5_04010905]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
533	4/17/2023 Zendesk Ticket #461743 re “game will not load on pc and phone”	Disputed	Disputed	FRE 401, 402, 801, 802, F	

	[HIGH5_151491]				
534	4/23/2023 Zendesk Ticket #464993 re "Sign up" [HIGH5_151223]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
535	5/5/2023 Zendesk Ticket #468828 re "Locked" [HIGH5_151272]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
536	5/6/2023 Zendesk Ticket #469467 re "Shut out" [HIGH5_151244]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
537	5/27/2023 Zendesk Ticket #477784 re "Your game states I cannot play due to region" [HIGH5_151619]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
538	6/7/2023 Zendesk Ticket #481345 re "Purchasing" [HIGH5_151357 – HIGH5_151369]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
539	6/16/2023 Zendesk Ticket #484255 re "Can't play" [HIGH5_151255]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
540	6/20/2023 Zendesk Ticket #485373 re "GC an SC unavailable after I went into Washington st." [HIGH5_151647]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
541	7/19/2023 High 5 Games email to rickll53@yahoo.com re "Wow 3 BILLON	Stipulated	Disputed	FRE 401, 402, 801, 802, F	

	Surprise Gift Coins For You!" [LARSEN_000236 – LARSEN_000243]				
542	7/25/2023 Responsible Social Gameplay Policy	Disputed	Disputed	FRE 401, 402, 801, 802, F	
543	7/29/2023 Zendesk Ticket #501440 re "Casino" [HIGH5_151603]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
544	10/6/2023 Plaintiff's Objections and Responses to Defendant High 5 Games, LLC's First Set of Interrogatories to Plaintiff Rick Larsen	Stipulated	Disputed	FRE 401, 402	
545	2/9/2024 Declaration of Shawn Davis	Stipulated	Stipulated		
546	2/16/2024 Supplemental Declaration of Shawn Davis	Stipulated	Disputed	FRE 401, 402	
547	2/22/2024 Zendesk Ticket #593409 [HIGH5_151567]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
548	4/19/2024 Plaintiff's Objections and Responses to Defendant High 5 Entertainment LLC's First set of Interrogatories to Plaintiff Rick Larsen	Stipulated	Disputed	FRE 401, 402	
549	5/7/2024 Defendant High 5 Entertainment LLC's Supplemental Responses to Plaintiff's First Set of Requests for Production	Stipulated	Disputed	FRE 401, 402, 801, 802	

550	5/8/2024 Second Supplemental Declaration of Shawn Davis	Stipulated	Disputed	FRE 401, 402	
551	IP Address Spreadsheet (HIGH5_03862058)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
552	IP Address Spreadsheet (HIGH5_03862059)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
553	IP Address Spreadsheet (HIGH5_03862060)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
554	IP Address Spreadsheet (HIGH5_03862061)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
555	IP Address Spreadsheet (HIGH5_03862062)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
556	IP Address Spreadsheet (HIGH5_03862063)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
557	IP Address Spreadsheet (HIGH5_03862064)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
558	IP Address Spreadsheet (HIGH5_03862065)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
559	IP Address Spreadsheet (HIGH5_03862066)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
560	IP Address Spreadsheet (HIGH5_03862067)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
561	IP Address Spreadsheet	Disputed	Disputed	FRE 401, 402, 801, 802, F	

	(HIGH5_03862068)				
562	IP Address Spreadsheet (HIGH5_03862069)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
563	IP Address Spreadsheet (HIGH5_03862070)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
564	IP Address Spreadsheet (HIGH5_03862071)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
565	IP Address Spreadsheet (HIGH5_03862072)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
566	IP Address Spreadsheet (HIGH5_03862073)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
567	IP Address Spreadsheet (HIGH5_03862074)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
568	IP Address Spreadsheet (HIGH5_03862075)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
569	IP Address Spreadsheet (HIGH5_03862076)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
570	IP Address Spreadsheet (HIGH5_03862077)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
571	IP Address Spreadsheet (HIGH5_03862078)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
572	IP Address Spreadsheet (HIGH5_03862079)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
573	IP Address Spreadsheet	Disputed	Disputed	FRE 401, 402, 801, 802, F	

	(HIGH5_03862080)				
574	IP Address Spreadsheet (HIGH5_03862081)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
575	IP Address Spreadsheet (HIGH5_03862082)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
576	IP Address Spreadsheet (HIGH5_03862083)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
577	IP Address Spreadsheet (HIGH5_03862084)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
578	IP Address Spreadsheet (HIGH5_03862085)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
579	IP Address Spreadsheet (HIGH5_03862086)	Disputed	Disputed	FRE 401, 402, 801, 802, F	
580	5/24/2024 Expert Report of Shawn Davis	Stipulated	Stipulated		
581	5/24/2024 Shawn Davis CV	Stipulated	Stipulated		
582	Sean Wilson User Profile [HIGH5_000001 – HIGH5_000007]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
583	Spreadsheet of Sean Wilson's accessed lobby spins in High 5 Casino games [HIGH5_000014]	Disputed	Disputed	FRE 401, 402, 801, 802, F	
584	Spreadsheet of Sean Wilson's spins [HIGH5_000016]	Disputed	Disputed	FRE 401M 402, 801, 802, F	

585	Sean Wilson's LinkedIn page	Disputed	Disputed	FRE 401, 402, 801, 802, F	
586	Rick Larsen Payment History [LARSEN_000003 – LARSEN_000233]	Stipulated	Stipulated		
587	High 5 Games LLC's Terms of Use [HIGH5_000029 – HIGH5_000034]	Disputed	Disputed	FRE 401, 402, 801, 802	
588	High 5 Casino website - Unable to Login [LARSEN_000001]	Stipulated	Disputed	FRE 401, 402	
589	Rick Larsen bank statements - Payments made to Facebook [LARSEN_000234 – LARSEN_000235]	Stipulated	Stipulated		
590	Rick Larsen User Profile [HIGH5_151083 – HIGH5_151087]	Stipulated	Stipulated		
591	Rick Larsen High 5 Purchases [HIGH5_04016766]	Stipulated as to PDF provided	Stipulated as to PDF provided		
592	Rick Larsen Transaction History (redacted version) [LARSEN 000285- LARSEN_000462]	Stipulated	Stipulated		
593	Screenshot of High 5 Casino player registration page showing Washington removed from drop down menu [HIGH5_151213]	Disputed	Disputed	FRE 401, 402, 801, 802, F	

594	High 5 Casino Screenshot	Disputed	Disputed	FRE 401, 402, F	
595	High 5 Vegas Screenshot	Disputed	Disputed	FRE 401, 402, F	
596	Double Da Vinci Diamonds Screenshot	Disputed	Disputed	FRE 401, 402, F	
597	High 5 Games' Game Library	Disputed	Disputed	FRE 401, 402, F	
598	Screenshot of Double DaVinci Diamonds game in Demo Play Mode	Disputed	Disputed	FRE 401, 402, F	
599	Screenshot of App in Demo Play	Disputed	Disputed	FRE 401, 402, F	
600	Screenshot of "Golden Peony" game in "Demo Play" mode	Disputed	Disputed	FRE 401, 402, F	
601	IP Data Spreadsheet	Disputed	Disputed	FRE 401, 402, 602, 801, 802, E, F,	
602	High 5's FAQ webpage "How do I get free coins"	Disputed	Disputed	FRE 401, 402, 801, 802, F	
603	High 5's FAQ webpage "Daily Bonus"	Disputed	Disputed	FRE 401, 402, 801, 802, F	
604	High 5's FAQ webpage "Is there a reward for playing every day?"	Disputed	Disputed	FRE 401, 402, 801, 802, F	
605	High 5's FAQ webpage "Daily Wheel"	Disputed	Disputed	FRE 401, 402, 801, 802, F	
606	High 5's FAQ webpage "Can I play any of the casinos for real money?"	Disputed	Disputed	FRE 401, 402, 801, 802, F	
607	Sean Wilson's Spin History	Disputed	Disputed	FRE 401, 402, 403, 801, 802, F	

608	Apple Billing Reports [HIGH5_03245487 – HIGH5_03245488]	Disputed	Disputed	Illegible, FRE 401, 402, 801 802	
609	Amazon – Apple – Google – Facebook Earnings 2021 [HIGH5_03245489]	Disputed	Disputed	FRE 401, 402, 801 802, F	
610	Amazon – Apple – Google – Facebook Earnings 2022 [HIGH5_03245490]	Disputed	Disputed	FRE 401, 402, 801 802, F	
611	Amazon – Apple – Google – Facebook Earnings 2023 [HIGH5_03245491]	Disputed	Disputed	FRE 401, 402, 801 802, F	
612	Revenue by Product Type - Google [HIGH5_03245492]	Disputed	Disputed	FRE 401, 402, 801 802, F	
613	Meta Remittance [HIGH5_03245493]	Disputed	Disputed	FRE 401, 402, 403, 801, 802, F	
614	4/2/2018 Retention Agreement between Sean Wilson and Edelson PC	Stipulated	Disputed	FRE 401, 402, 403, 801, 802, F	

Statement as to Electronic Format

Defendant plans to present its exhibits in electronic format to the jurors.

The Parties' Objection Code:

E	Exhibit is objectionable because it constitutes attempted expert testimony from a person who was not designated as an expert (Fed. R. Civ. P. 26)
F	Lack of foundation
MIL	Subject of Motion in Limine


1 In the Authenticity and Admissibility columns, indicate “Stipulated” or “Disputed”. If
2 “Disputed”, identify the objection in the Objection column. An objection based on a Fed. R.
3 Evid. should reference the rule number; additional objections should be referenced by a code that
4 the parties include with the exhibit list. The “Admitted” column is for use by the Court.
5 (No party is required to list any exhibit which is listed by another party, or any exhibit to be used
6 for impeachment only. *See* LCR 16 for further explanation of numbering of exhibits).

7 **ACTION BY THE COURT**

- 8 (a) This case is scheduled for trial before a jury on February 3, 2025, at 9:00 a.m.
9 (b) Trial briefs shall be submitted to the court on or before January 13, 2025.
10 (c) Jury instructions requested by either party shall be submitted to the court on or before
11 January 13, 2025. Suggested questions of either party to be asked of the jury by the court
12 on voir dire shall also be submitted to the court on or before January 13, 2024.
13 (d) (Insert any other ruling made by the court at or before pretrial conference.)

14 This order has been approved by the parties as evidenced by the signatures of their
15 counsel. This order shall control the subsequent course of the action unless modified by a
16 subsequent order. This order shall not be amended except by order of the court pursuant to
17 agreement of the parties or to prevent manifest injustice.

18
19
20 Dated this 29th day of January, 2025.

21 
22 _____
23 Judge Tiffany M. Cartwright
24 United States District Judge
25